

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EMMETT BUFFMAN,

Plaintiff,

CIVIL ACTION NO. 13-cv-14024

v.

DISTRICT JUDGE JUDITH E. LEVY

UNITED STATES OF
AMERICA, et al.,

MAGISTRATE JUDGE MONA K. MAJZOUB

Defendants.

**OPINION AND ORDER GRANTING DEFENDANT'S
MOTION TO STRIKE PLAINTIFF'S JURY DEMAND [62]**

On September 19, 2013, Plaintiff Emmett Buffman, a prisoner at the Federal Correctional Institution in Milan, Michigan (FCI Milan), filed this claim against Defendants J.A. Terris, James Zestos, Restituto Pomaloy, Stephen Gidel, and William Malatinsky under *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971) and the United States of America under the Federal Tort Claims Act (FTCA) alleging "Negligence, Abuse of Process, Acts Errors, Omissions, Deliberate Indifference, and Condoning or Acquiescing to other federal employees (or each other) from doing the above cited Tort's." (sic). (See docket no. 1.) The Court dismissed Plaintiff's claims against the individual Defendants on January 6, 2015 for Plaintiff's failure to exhaust his administrative remedies. (Docket no. 51.) What remains are Plaintiff's claims against Defendant United States of America under the FTCA. On June 22, 2015, the Court assigned pro bono counsel to represent Plaintiff on his remaining claims. (Docket no. 64.)

Prior to the assignment of counsel, on June 3, 2015, Plaintiff filed a Jury Trial Demand with the Court. (Docket no. 61.) Defendant United States of America subsequently filed a

Motion to Strike Plaintiff's Jury Demand, which is currently before the Court. (Docket no. 62.) Plaintiff has not responded to Defendant's Motion. This action has been referred to the undersigned for all pretrial purposes. (Docket no. 20.) The Court has reviewed the pleadings and dispenses with oral argument pursuant to Eastern District of Michigan Local Rule 7.1(f)(2). The Court is now ready to rule pursuant to 28 U.S.C. § 636(b)(1)(A).

Pursuant to 28 U.S.C. § 2402, "any action against the United States under [the Federal Tort Claims Act] shall be tried by the court without a jury." 28 U.S.C. § 2402; *see also United States v. Neustadt*, 366 U.S. 696, 701 n. 10 (1961), *Wilson v. Big Sandy Health Care, Inc.*, 576 F.3d 329, 334 (6th Cir. 2009). Accordingly, Plaintiff does not have a Seventh Amendment right to a jury trial on his medical malpractice claims against the United States under the FTCA. The Court will, therefore, strike Plaintiff's Jury Demand.

IT IS THEREFORE ORDERED that Defendant's Motion to Strike Plaintiff's Jury Demand [62] is **GRANTED**. Plaintiff's Jury Trial Demand [61] is hereby stricken from the record.

NOTICE TO THE PARTIES

Pursuant to Federal Rule of Civil Procedure 72(a), the parties have a period of fourteen days from the date of this Order within which to file any written appeal to the District Judge as may be permissible under 28 U.S.C. § 636(b)(1).

Dated: December 3, 2015

s/ Mona K. Majzoub
MONA K. MAJZOUB
UNITED STATES MAGISTRATE JUDGE

PROOF OF SERVICE

I hereby certify that a copy of this Order was served upon counsel of record on this date.

Dated: December 3, 2015

s/ Lisa C. Bartlett
Case Manager